

VIRGIL T. LEE,)	No. C 06-1416 JSW (PR)
)	
Petitioner,)	
)	
vs.)	ORDER TO SHOW CAUSE
)	
JAMES A. YATES, Warden,)	
)	
Respondent.)	(Docket No. 2)
)	
)	

Petitioner, a prisoner of the State of California, currently incarcerated at Pleasant Valley State Prison in Coalinga, California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the constitutional validity of his state conviction. Petitioner has also filed a motion to proceed *in forma pauperis*, which is now GRANTED (docket no. 2). This order directs Respondent to show cause why the petition should not be granted.

According to the petition, Petitioner was convicted after trial in Santa Clara County Superior Court and sentenced to a term of eight years in state prison. Petitioner appealed his conviction to the California Court of Appeal in 2004. The Supreme Court of California denied Petitioner's petition for review in 2005. Petitioner filed the instant federal habeas petition on February 24, 2006.

I Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a

1 person in custody pursuant to the judgment of a State court only on the ground that he is
 2 in custody in violation of the Constitution or laws or treaties of the United States.” 28
 3 U.S.C. § 2254(a).

4 It shall “award the writ or issue an order directing the respondent to show cause
 5 why the writ should not be granted, unless it appears from the application that the
 6 applicant or person detained is not entitled thereto.” *Id.* § 2243.

7 II Legal Claims

8 The petition raises the following ground for relief: Petitioner’s Sixth Amendment
 9 rights were violated by the trial court’s failure to provide a short continuance for counsel
 10 to consult with an expert prior to cross-examination of the prosecution’s expert witness.
 11 Liberally construed, it does not appear from the face of the petition that Petitioner is not
 12 entitled to relief. Accordingly, Respondent is ordered to respond to the petition as set
 13 forth below.

14 **CONCLUSION**

15 For the foregoing reasons and for good cause shown,

16 1. The Clerk shall serve by certified mail a copy of this order and the petition, and
 17 all attachments thereto, on Respondent and Respondent's attorney, the Attorney General
 18 of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

19 2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)**
 20 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the
 21 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
 22 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all
 23 portions of the state trial record that have been transcribed previously and that are relevant
 24 to a determination of the issues presented by the petition. If Petitioner wishes to respond
 25 to the answer, he shall do so by filing a traverse with the Court and serving it on
 26 Respondent within **thirty (30)** days of his receipt of the answer.

27 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
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1 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
2 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court
3 and serve on Respondent an opposition or statement of non-opposition within **thirty (30)**
4 days of receipt of the motion, and Respondent shall file with the Court and serve on
5 Petitioner a reply within **fifteen (15)** days of receipt of any opposition.

6 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
7 the Court informed of any change of address by filing a separate paper captioned "Notice
8 of Change of Address." He must comply with the Court's orders in a timely fashion.
9 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
10 to Federal Rule of Civil Procedure 41(b)

11 IT IS SO ORDERED.

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13 DATED: July 14, 2006



14 JEFFREY S. WHITE
15 United States District Judge
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